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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of STEPHANIE M.
WILSON and HASHIM M. BOMANI.

B217535

(Los Angeles County
Super. Ct. No. VD065587)

STEPHANIE M. WILSON,

Respondent,
v.

HASHIM M. BOMANI,

Appellant.

APPEAL from judgment of dissolution of marriage and related orders of the
Superior Court of Los Angeles County. Robert B. Axel, Temporary Judge. Affirmed.

Hashim M. Bomani, in pro. per., for Appellant.

Stephanie M. Wilson, in pro. per., for Respondent.

Background Facts

Stephanie Wilson and Hashim Bomani were married (for the second time) on January 11, 2007, and separated about six months later, in July 2007. They have a son, born in 1997 (before their previous marriage), and a daughter born in September 2007, soon after their separation. Ms. Wilson filed for dissolution on November 8, 2007.

The record reflects frequent skirmishes in the trial court concerning custody and support, for most of which the parties were unrepresented by counsel. On May 5, 2008, Ms. Wilson apparently sought a TRO (which was not included in the record on appeal) seeking custody, support, and to prevent domestic violence. On May 15, 2008, Mr. Bomani responded with an OSC for contempt against Ms. Wilson (also omitted from the record on appeal), alleging her violation of an interim visitation order. A hearing on May 29, 2008 resulted in an order for Mr. Bomani's visitation with the children in the presence of a mutually agreed monitor, pending a hearing then already set for July 31, 2008.

At the July 31, 2008 hearing, Mr. Bomani's OSC was heard by the Honorable Robert B. Axel, Commissioner, acting as temporary judge. Finding that the OSC's allegations were not "even coming close to something that's contempt," the court interposed and sustained its own demurrer, dismissed the OSC, granted 10 days to amend, and advised Mr. Bomani either to get the aid of an attorney or to use the court's self-help facilities. Mr. Bomani made no objection to having the matter heard by Commissioner Axel, and the court's minute order for that hearing was not designated as part of the record on appeal. On August 12, 2009, Commissioner Axel consolidated various issues, including the contempt OSC, to be heard by him on August 27. The record reflects no objection to that order.

The parties appeared before Commissioner Axel again at the August 27, 2008 hearing. The court expressed its dismay with Mr. Bomani's filings, dismissing the amended OSC as legally insufficient, and reserved the remaining issues to be heard at the scheduled trial. It also took the case under judicial management, ordering any further

filings by Mr. Bomani not to require a response or to be set for hearing until they had been reviewed by the court.¹ At that hearing, Mr. Bomani interposed his first objection to having the matter heard by Commissioner Axel acting as temporary judge. The court overruled the objection, observing, “You already signed the stipulation, sir. So that’s over and done with.” But after the ruling Mr. Bomani continued to voice his objection.

The parties appeared before Commissioner Axel again on September 22, 2008, in connection with a request by Ms. Wilson for a restraining order. Mr. Bomani again appeared in propria persona, and again objected to having the matter heard by a temporary judge. And the court again noted that the file contained Mr. Bomani’s signed stipulation, which was “good for the entire case.” Although Mr. Bomani argued that “it was with another judge when I did sign that,” the trial court observed that “The one that’s in the file has got my name on it.”²

At the trial on October 23, 2008, Ms. Wilson (this time represented by counsel) testified to the facts underlying the relief she sought. She sought continuation of the existing orders with respect to Mr. Bomani’s visitation with the children (then 11 years old and 1 year old, respectively) on alternate Sundays, with some modification. She sought an order requiring Mr. Bomani to fulfill his overdue child support and child care obligations, and for continuation of those orders without change. She testified that no community assets had been acquired during the six-month marriage, and there were no community debts; the parties therefore should keep their respective assets and pay their own bills. She sought no spousal support, and no retention of jurisdiction by the court with respect to spousal support.

Consistent with the trial court’s warnings that Mr. Bomani did not adequately understand what was required of him at trial, Mr. Bomani neither questioned Ms.

¹ Mr. Bomani’s appeal does not challenge the order requiring advance court approval of his filings.

² Mr. Bomani did not challenge the accuracy of the trial court’s statement that the signed stipulation authorizing Commissioner Axel to act was “in the file.” No stipulation (naming Commissioner Axel or anyone else) was designated as part of the record on appeal.

Wilson's testimony nor offered his own. He relied instead on declarations he had submitted in connection with the earlier hearings, without their voluminous attachments (which the court ruled were inadmissible for lack of foundation).³

Commissioner Axel entered judgment of dissolution at the trial's conclusion, finding that the parties had stipulated that he could conduct the trial and other proceedings as judge pro tem. It held that Mr. Bomani was entitled to a share (though miniscule) of the pension benefits that Ms. Wilson had accrued during the six-month marriage, and that otherwise, there were no community assets or debts to be divided. The court awarded sole legal and physical custody of the children to Ms. Wilson, continuing its previous orders of child support, child care, and monitored visitation by Mr. Bomani. It held that Mr. Bomani's right to seek spousal support expired three months after the parties' separation, and that Mr. Bomani owed unpaid child support and child care payments totaling \$4,635, which it ordered paid over time. And it ordered Mr. Bomani to pay \$1,500 toward Ms. Wilson's attorney fees.

Judgment was entered on June 19, 2009, nunc pro tunc as of October 23, 2008. Mr. Bomani filed a timely notice of appeal on July 6, 2009.

Contentions On Appeal

Mr. Bomani's appeal identifies the following contentions:

- (1) The trial court erred by refusing to disqualify itself because Mr. Bomani withdrew his stipulation to have the matter heard by Commissioner Axel as a temporary judge, and because its decisions exhibited bias and prejudice.
- (2) The trial court abused its discretion and violated Mr. Bomani's rights by granting sole custody of the couple's children to Ms. Wilson, without evidence

³ The excluded attachments purport to be primarily of copies of checks representing payments Mr. Bomani had made before, during, and after the current marriage, to a mortgage company and to Ms. Wilson; copies of news reports or commentary that attributed various crimes and moral wrongs to individuals associated with a religious group with which Ms. Wilson allegedly was affiliated; and letters of recommendation, service awards, and the like, attesting to Mr. Bomani's achievements and character.

that Mr. Bomani was an unfit parent and despite evidence that Ms. Wilson was guilty of contempt of court.

(3) The trial court abused its discretion by excluding documentary evidence of Ms. Wilson's religious affiliations, which he had offered to show that Ms. Wilson is an unfit parent, and by excluding documentary evidence purporting to show Mr. Bomani's fitness as a parent.

(4) The trial court erred by failing to divide "survivorship community property and/or assets" equally between the parties.

None of these contentions has merit.

Discussion

Although courts routinely bend over backward attempting to accommodate unrepresented parties, they sometimes face a difficult conundrum. They may not advise an unrepresented litigant about how to protect his or her legal rights; yet in order to perform their judicial functions they sometimes must forge ahead even when it is plain that an unrepresented party is not up to the task. This is such a case.

1. The trial court properly refused Mr. Bomani's efforts to disqualify Commissioner Axel from presiding as a temporary judge.

"On stipulation of the parties litigant," a commissioner may act as temporary judge, "empowered to act until final determination of the cause." (Cal. Const., art. VI, § 21; Code Civ. Proc., § 259, subd. (d); Fam. Code § 4251, subd. (b).) But without a stipulation, a commissioner lacks authority to hear a contested dissolution action. (*In re Marriage of Galis* (1983) 149 Cal.App.3d 147, 154.)

Even where there has been no written or express stipulation, however, a valid stipulation may be implied from a party's participation, without objection, in proceedings before the temporary judge. (*In re Horton* (1991) 54 Cal.3d 82, 86, 90-100; *Estate of Soforenko* (1968) 260 Cal.App.2d 765, 766-767.) The record here indicates both that Mr. Bomani did in fact stipulate to proceeding before Commissioner Axel, acting as temporary judge (although the stipulation was not designated in the record on appeal),

and that he also participated in proceedings before Commissioner Axel, asserting no objection until after the court had announced adverse rulings. That participation is fatal to his contention on appeal, even if there had been no express stipulation. “This failure to make a timely objection was tantamount to an implied waiver of the required stipulation that the matter be heard by the commissioner sitting as a temporary judge.” (*In re Brittany K.* (2003) 96 Cal.App.4th 805, 813-814.)

Although the record on appeal does not include the documents constituting the stipulation to Commissioner Axel acting as a temporary judge in this matter, the minute order for the July 7, 2008, hearing recites that the parties had “stipulated that Robert B. Axel may hear this matter as Judge Pro Tempore for this hearing and all future hearings.” The minute order for the OSC hearing on July 31, 2008, repeats that stipulation, “that Commissioner Robert B. Axel may hear this matter as Judge Pro Tempore for this hearing and any other proceedings.” And Mr. Bomani nowhere disputed—as Commissioner Axel observed on the record—that the stipulation signed by Mr. Bomani “that’s in the file has got my name on it.” With no showing or contention on appeal to the contrary—no showing that Mr. Bomani did not in fact stipulate to having Commissioner Axel act as temporary judge—we must conclude that the trial court’s recital is accurate.⁴

In any event, Mr. Bomani’s objection was untimely. He voiced his first objection at the August 27, 2008 hearing, almost a month after Commissioner Axel had reviewed Mr. Bomani’s OSC for sufficiency, and found it lacking. That failure to interpose an objection, before the trial court had considered the matter and ruled, constituted an implied waiver to Commissioner Axel’s status, even if there had been no express stipulation. (*In re Brittany K., supra*, 96 Cal.App.4th at pp. 813-814.) The trial court was fully justified in declining to permit Mr. Bomani’s unfounded denials of a stipulation to derail the proceedings.

⁴ Mr. Bomani did not designate any stipulation at all for inclusion in the record on appeal—not even the stipulation that he initially contended would show that he had stipulated to a different temporary judge but not to Commissioner Axel.

Mr. Bomani contends also that the trial court’s “extreme bias and prejudice” toward him is evidenced by its dismissal of his OSC request “with prejudice.” But it appears that Mr. Bomani misunderstands the use of the word “prejudice” in this context. The trial court’s ruling—and its use of that wording—does not reveal any bias or prejudice. It instead reflects the court’s determination (which Mr. Bomani does not challenge in this appeal) that the OSC did not allege facts that could justify the requested relief.⁵

The record on appeal does not show that the trial court acted with bias or prejudice. We find no error in the trial court’s refusal to disqualify itself from hearing this matter.

2. The trial court did not abuse its discretion by excluding documentary evidence offered to establish Ms. Wilson’s religious affiliations and Mr. Bomani’s record of competence and service.

In determining the child custody issue, Mr. Bomani urged the trial court to consider documentation that he had attached to various declarations filed in connection with earlier hearings. According to Mr. Bomani, the documentation showed Ms. Wilson’s affiliation with a religious sect that some declarants contended was connected to criminal behavior, and it purported also to show Mr. Bomani’s record of service and reputation for good behavior.

In excluding the documentary attachments from evidence, the trial court explained that it would accept the evidence in Mr. Bomani’s declarations, but that it would not review or read the attachments and exhibits that were not “examined and presented at trial with the proper foundation, which we talked about earlier.” It noted that the court cannot consider the “tons” of attached pages unless and until they are admitted into evidence.

No adequate foundation for the attached exhibits was offered, and nothing in the record suggests (or even hints) that any such foundation could have been produced. The

⁵ A dismissal “with prejudice” is defined as a “final disposition, barring the right to bring or maintain an action on the same claim or cause.” (Black’s Law Dict. (6th ed. 1990) p. 469, col. 1.)

documents were unidentified and unauthenticated (see (Evid. Code, § 1400; *McAllister v. George* (1977) 73 Cal.App.3d 258, 262 [document is inadmissible without evidence sufficient to establish that it is what it purports to be]); to the extent they referred to wrongdoing by others, that evidence could not prove wrongdoing by Ms. Wilson; and the evidence reciting Ms. Wilson's religious affiliations and Mr. Bomani's good deeds would in any event constitute hearsay to which no obvious exception would apply. (Evid. Code, § 1200). Mr. Bomani's appeal fails to establish any error or prejudice in the trial court's refusal to consider the contents of the attachments to his declarations.

3. The trial court did not err by awarding sole custody of the minor children to Ms. Wilson.

Mr. Bomani's appeal offers three reasons for his contention that it was an abuse of discretion for the trial court to award Ms. Wilson, rather than him, sole legal and physical custody of the couple's children: (1) Ms. Wilson had violated visitation orders, constituting contempt of court; (2) due process required that before his parental rights could be terminated, Mr. Bomani's unfitness as a parent must be established by clear and convincing evidence; and (3) the evidence was excluded that showed that Ms. Wilson's religious affiliation was detrimental to the children, and that Mr. Bomani would be a fit parent.

Even if Mr. Bomani's showing for these points had been admitted into evidence, they could not have justified or required a different result. The issue is resolved according to the applicable standards of review. "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 272; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 1995) ¶¶ 8:87-8:87.1, p. 8-38.) This rule applies to issues of marriage dissolution no less than to other issues. (See *In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682.) Thus, although discretion is abused "whenever it may be fairly said that in its exercise the court . . . contravened the uncontradicted evidence" (*Ibid.*,

quotation marks omitted), the trial court is vested with discretion to determine the facts in accordance with any tenable conclusion supported by the evidence before it. “The showing [of error] on appeal is insufficient if it presents a state of facts which simply affords an opportunity for a difference of opinion.” (*Ibid.*, citing *In re Marriage of Varner* (1997) 55 Cal.App.4th 128, 138.)

The record shows that Mr. Bomani repeatedly accused Ms. Wilson of contempt of court, but the vehemence of his accusations was not matched by evidence sufficient to establish any contempt, much less to compel such a determination. He sought custody of the children, alleging that Ms. Wilson was emotionally and physically abusive to the children, that her affiliation with a religious cult was harmful to the children, that she had knowingly violated the court’s orders for his monitored visitation with the children, and that she was guilty of neglect. However we need not evaluate whether these accusations, if proven, could establish that the trial court abused its discretion, for the accusations were unproven. Nor are we in a position to evaluate Mr. Bomani’s potential fitness as a parent, for that is not the issue on appeal. Mr. Bomani’s proffers did not constitute actual evidence that Ms. Wilson had actually acted unreasonably or in knowing violation of any order on any occasion, nor that Ms. Wilson was an abusive or unfit parent.

Apart from Mr. Bomani’s unsupported accusations, the trial court had before it no supporting evidence of those charges. Mr. Bomani neither cross-examined Ms. Wilson about her testimony (including testimony indicating Mr. Bomani’s failures to make court-ordered child support and child care payments), nor offered testimony to contradict it.

The record on appeal thus contains substantial evidence supporting Ms. Wilson’s position, but little or nothing upon which the trial court could have rested a determination in Mr. Bomani’s favor on these issues.⁶ The trial court was fully justified on this record in determining that Ms. Wilson’s custody request was in the children’s interests. “The

⁶ In addition, the trial court had some evidence before it that Mr. Bomani had suffered a number of criminal convictions, that he was under medication for bipolar disorder or other mental disease, that he had obligations in the military reserves that required periodic absences from home, and that he had failed to pay previously ordered child support and child care expenses.

determination of child custody rests with the discretion of the trial court,” and “such an exercise of discretion is not to be disturbed on appeal in the absence of a showing of abuse.” (*In re Marriage of Urband* (1977) 68 Cal.App.3d 796, 798 [accusations about parent’s religious affiliations do not show abuse of discretion in custody award].) Even if the evidence in the record were sufficient to support a difference of opinion, that would not be enough to show error or to justify reversal on appeal. (*In re Marriage of Rosevear, supra*, 65 Cal.App.4th at p. 682.)

4. The record discloses no error in the trial court’s determination that there were no community property assets or debts to be divided between the parties.

The trial court found that the marriage had resulted in no community property (apart from the minuscule interest in the portion of wife’s pension earned during the short marriage, a share of which was awarded to husband). Mr. Bomani contends that the trial court erred by failing to require equal division of “survivorship community property and/or assets” with a net value of some \$835,000. The record shows no such error.

Ms. Wilson testified that the parties acquired no community assets or debts during their six-month second marriage, and asked that each party be entitled to retain their own personal belongings, vehicles, and assets and debts in their own names. Although Mr. Bomani submitted a declaration alleging the existence of substantial community property, he rested his case without presenting any evidence at all that any of the assets had been acquired during marriage. He instead asked that the property should all be “included in the in kind division,” because “separate property and community property were comingled” during the marriage, and because during the marriage he had made payments for the property.

The trial court did not buy it, based on evidence before it. Under the court’s questioning, it turned out that when Mr. Bomani testified the properties he listed had been “acquired” during the marriage, he meant that mortgage payments had been made during the marriage for the benefit of properties that had had been acquired years earlier. And Mr. Bomani’s testimony about community debts was equally flawed, the trial court

found, for it included (for example) debts for purchases made before the parties' second marriage, and student loans incurred after their separation.

Although Mr. Bomani represented to the court that because he “made community payments” toward properties during the marriage (indicating that the properties were thus community assets), his proffer of evidence (even if it had been authenticated) shows only that he made some payments to Ms. Wilson during the marriage. The record lacks any evidence that the payments were devoted to any particular asset, or that they enhanced the value or decreased the debt attributable to any particular asset—or even that they exceeded the benefits that the community had received from those assets during their brief marriage. In light of uncontradicted evidence that the parties had no agreement with respect to the commingling of personal and community property, the record fully supports the trial court’s conclusion that the marriage resulted in no community property.

Conclusion

It is an unfortunate reality that we cannot know, but can only guess, the extent to which the outcome of this case might have been different had the parties—and the court—had the benefit of appropriate representation at the trial and appellate levels. The record nevertheless is clear that there was no abuse of discretion in the trial court’s rulings as to each of the matters raised in Mr. Bomani’s appeal.

Disposition

The judgment is affirmed.
NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.